

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:	§	
	§	Chapter 11
CIRCUIT CITY STORES, INC., et al.,	§	
	§	Case No 08-35653 (KRH)
Debtors.	§	
	§	Jointly Administered

RESPONSE AND REQUEST FOR HEARING TO LIQUIDATING TRUST'S TWENTY-FIRST OMNIBUS OBJECTION TO LANDLORD CLAIMS (REDUCTION OF CERTAIN PARTIALLY INVALID CLAIMS, RECLASSIFICATION OF CERTAIN MISCLASSIFIED CLAIMS, DISALLOWANCE OF CERTAIN INVALID CLAIMS, DISALLOWANCE OF CERTAIN LATE FILED CLAIMS, AND DISALLOWANCE OF CERTAIN AMENDED CLAIMS)

Capmark Finance, Inc. ("Capmark"), by and through its counsel, hereby files this Response and Request for Hearing to Trust's Twenty-First Omnibus Objection To Landlord Claims (Reduction of Certain Partially Invalid Claims, Reclassification of Certain Misclassified Claims, Disallowance of Certain Invalid Claims, Disallowance of Certain Late Filed Claims, and Disallowance of Certain Amended Claims) (the "Objection"), and states as follows:

Proof of Claim 14363

1. The Trustee for Debtors has objected to the proof of claim number 14363 (the "Claim") filed by Capmark as the assignee of leases by, and rents owing to, certain of the Debtor's real property landlords (the "Landlords") as set forth in Exhibit A.

2. As stated in the Claim, despite remaining in possession of the premises since the

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filing of its petition for relief under Chapter 11 of the Bankruptcy Code, the Debtors did not remain current with respect to the post petition Rent due under the Leases.

3. The Claim was filed on June 30, 2009, in the amount of \$1,120,367.89 for unpaid post petition Rent.

4. Circuit City rejected all the leases that are the subject of proof of claim 14363.

5. With regard to proof of claim 14363 Trustee for Debtors states that:

“Expunge as unsupported by debtors books and records”

6. Rule 3001(f) of the Federal Rules of Bankruptcy Procedure provides that a “proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim. Fed. R. Bankr P. 3001(f).

7. After a creditor has timely and properly filed a proof of claim, the Debtor must produce substantial evidence to rebut this prima facie evidence. See in re Hemingway Transp. Inc. 993 F.2d 915, 925 (1st Cir. 1993) (“The interposition of an objection does not deprive the proof of claim of presumptive validity unless the objection is supported by substantial evidence”); In re Harford Sands, Inc. 372 F.3d 637,640-41 (4th Cir. 2004) (Creditor's filing of proof of claim constitutes prima facie evidence of amount and validity of claim, and burden is on debtor to object to claim and to introduce evidence to rebut its presumptive validity); In re Gran, 964 F.2d 882, 827 (8th Cir. 1992) (“The objection party must then produce evidence rebutting the claimant or else the claimant will prevail.”)

8. In this case, the Claim was filed prior to the Bar Date and in accordance with the Federal Rules of Bankruptcy Procedure and provides sufficient documentary support for the Claim and the calculation of the Claim amount. The Objection does not challenge the basis for

the Claims or provide any evidence whatsoever to supports its objection to the calculation of the Claims amounts.

9. The Debtor bears the burden of proof for the disallowance of any portion of the Claims. See In re Woodmere Investors Ltd. Partnership, 178 B.R. 346, 354 (Bankr. S.D.N.Y. 1995) Because Trustee for Debtors has produced no evidence whatsoever in support of the proposed reduction, he has failed to meet his burden of proof.

WHEREFORE, Capmark respectfully requests that the Court (a) overrule the Objection as it relates to the Claim; (b) allow the Claim as provided in the proof of claim; and (c) grant Capmark such other and further relief as this Court deems appropriate under the circumstances.

Dated: April 6, 2011

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CERTIFICATE OF SERVICE

The undersigned hereby states that on the 6th day of April, 2011, a true and correct copy of the above foregoing instrument was sent to:

Clerk of the Bankruptcy Court
United States Bankruptcy Court
701 East Broad Street-Room 4000
Richmond, VA 23219

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